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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2007 571

KIERAN COX  
5738 W. Michelle Drive  
Glendale, Arizona 85308

**STATEMENT OF ISSUES**

Applicant/Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 27, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Kieran Cox (Respondent). On or about August 23, 2007, Kieran Cox certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 15, 2008.

**JURISDICTION**

3. This Statement of Issues is brought before the Respiratory Care Board

1 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of  
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
5 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,  
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3750 of the Code states:

9 “The board may order the denial, suspension or revocation of, or the imposition of  
10 probationary conditions upon, a license issued under this chapter, for any of the following  
11 causes:

12 “(d) Conviction of a crime that substantially relates to the qualifications,  
13 functions, or duties of a respiratory care practitioner. The record of conviction or a  
14 certified copy thereof shall be conclusive evidence of the conviction.

15 “(g) Conviction of a violation of any of the provisions of this chapter or of any  
16 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
17 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
18 violate any provision or term of this chapter or of any provision of Division 2  
19 (commencing with Section 500).”

20 “(m) Denial, suspension, or revocation of any license to practice by another  
21 agency, state, or territory of the United States for any act or omission that would  
22 constitute grounds for the denial, suspension, or revocation of a license in this state.

23 7. Section 3752 of the Code states:

24 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
25 made to a charge of any offense which substantially relates to the qualifications,  
26 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
27 the meaning of this article. The board shall order the license suspended or revoked, or  
28 may decline to issue a license, when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section  
3 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
4 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
5 accusation, information, or indictment.”

6 8. California Code of Regulations, title 16, section 1399.370, states:

7 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
8 shall be considered to be substantially related to the qualifications, functions or duties of  
9 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
10 perform the functions authorized by his or her license or in a manner inconsistent with the  
11 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
12 those involving the following:

13 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
14 abetting the violation of or conspiring to violate any provision or term of the Act.”

15 “(c) Conviction of a crime involving driving under the influence or reckless  
16 driving while under the influence.”

#### 17 COST RECOVERY

18 9. Section 3753.5, subdivision (a) of the Code states:

19 "In any order issued in resolution of a disciplinary proceeding before the board,  
20 the board or the administrative law judge may direct any practitioner or applicant found to have  
21 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
22 investigation and prosecution of the case."

23 10. Section 3753.7 of the Code states:

24 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
25 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
26 administrative, filing, and service fees."

27 11. Section 3753.1 of the Code states:

28 "(a) An administrative disciplinary decision imposing terms of probation may

1 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
2 associated with monitoring the probation. "

3 FIRST CAUSE FOR DENIAL OF APPLICATION

4 (Substantially related conviction)

5 12. Respondent's application is subject to denial under code sections 3750(d)  
6 and 3752 [substantially related conviction], in that he has two alcohol-related convictions.

7 2002 Driving under the Influence Conviction

8 13. On or about December 30, 2002, in the state of Arizona, respondent was  
9 convicted of driving under the influence. The circumstances are as follows:

10 A. On or about July 22, 2002, respondent was arrested for violations of  
11 Arizona statute 28-701A [speeding], 28- 231(a)(1) [driving under the influence of alcohol], 28-  
12 381(A)(2) [driving with .08% or higher blood alcohol content], and 28-1382 [extreme driving  
13 under the influence.] At the time of arrest, his blood alcohol level was noted to be .260/.267%.

14 B. On or about December 30, 2002, Respondent was convicted on his plea of  
15 guilty to a violation of Arizona statute 28-1382 [extreme driving under the influence.] He was  
16 ordered to serve thirty days in jail and given credit for twenty days; pay fines; participate and  
17 fully cooperate in the Substance Abuse Screening Services, and he was ordered to install a  
18 certified interlock device in his vehicle for twelve months.

19 1996 Driving while alcohol impaired conviction

20 14. On or about September 18, 1996, in the state of New York, respondent  
21 was convicted of driving while alcohol impaired. The circumstances are as follows:

22 A. On or about August 7, 1996, respondent was involved in an automobile  
23 accident injuring himself, when he drove a vehicle while intoxicated and struck a house. He was  
24 arrested for violations of New York Vehicle and Traffic Law section 1192(3), [driving while  
25 intoxicated], section 1120(a) [failure to keep right], section 1180(a) [failure to reduce speed] and  
26 Penal Law section 221.05 [unlawful possession of marijuana.] The Alcoe-Sensoe test results  
27 indicated that he had an alcohol level of .20%; however, he refused to take a blood test.

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1           B.     On or about September 18, 1996, respondent agreed to a reduced plea and  
2 was convicted of New York Vehicle and Traffic Law section 1192(1), [driving while alcohol  
3 impaired] and section 1201(a) [stopping/standing on pavement.] He was ordered to pay fines,  
4 submit to an alcohol and substance abuse treatment center for evaluation, and complete all  
5 treatment recommended by such center.

6           15.     Therefore, respondent's application is subject to denial based on his two  
7 alcohol-related convictions, which are substantially related to the qualifications, functions or  
8 duties of a respiratory care practitioner and are in violation of code sections 3750(d), 3752,  
9 3750(g) and CCR 1399.370(a) and (c).

#### 10                           SECOND CAUSE FOR DENIAL OF APPLICATION

11   (Out of state Discipline)

12           16.     Paragraphs 13 and 14 are incorporated herein.

13           17.     Respondent's application is subject to denial under code section 3750(m)  
14 [disciplinary action by another state agency] in that the State of Arizona imposed discipline on  
15 his respiratory care practitioner license. The circumstances are as follows:

16           18.     On or about May 14, 1994, the Arizona State Board of Respiratory Care  
17 Examiners (the Arizona Board) issued a respiratory care practitioner license to respondent. On  
18 or about April 15, 1999, respondent entered into a stipulation and consent order of probation with  
19 the Arizona Board after he tested positive for alcohol while on duty at Meridian Point Hospital  
20 on or about March 11, 1999.

21           19.     On June 5, 2000, he filed a written request with the Arizona Board for  
22 termination of probation. The Arizona Board denied his request because he was not in  
23 compliance with his order. On March 14, 2001, respondent's license expired while still on  
24 probation.

25           20.     On March 4, 2003, respondent submitted a late license renewal  
26 application, and disclosed that he was convicted in July 2002 of a violation of Arizona statute 28-  
27 1382 [extreme driving under the influence.] The Arizona Board placed respondent on three years  
28 probation, effective May 8, 2003. He was subsequently released from probation on May 20,

1 2004.

2 21. Therefore, respondent's application is subject to denial based on a  
3 violation of code section 3750(m) [disciplinary action by another state agency.]

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Denying the application of Kieran Cox for a Respiratory Care Practitioner  
8 License;

9 2. Directing Kieran Cox to pay the Respiratory Care Board of California the  
10 costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
11 probation monitoring;

12 3. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: October 10, 2008

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17 Original signed by Liane Zimmerman for:  
18 STEPHANIE NUNEZ  
19 Executive Officer  
20 Respiratory Care Board of California  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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